

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARTIN HARRIS, JESSE KITHCART, DENNIS CARTER.

: CIVIL ACTION

EVELYN LINGHAM, ESDRAS FOWLER and MICHAEL GRAVES :
:
v. :

:
THE CITY OF PHILADELPHIA, REV. ALBERT F. CAMPBELL,
:
ROSITA SAEZ-ARCHILLA, M. MARK MENDEL,
:
HON. PAUL M. CHALFIN and MAMIE FAINES, each in his
:
or her official capacity as a member of the Board :
of Trustees of the Philadelphia Prison System,
:
FRANK HALL, in his official capacity as :
Commissioner of the Philadelphia Prisons,
:
WILHELMINA SPEACH, in her official capacity as
:
Warden of the Detention Center
:
THOMAS A. SHIELDS, in his official capacity as
:
Warden of the House of Corrections,
:
JOSEPH CERTAINE, in his official capacity as
:
Managing Director of the City of Philadelphia,
:
HON. EDWARD G. RENDELL, in his official capacity
:
as Mayor of the City of Philadelphia
: NO. 82-1847

MEMORANDUM AND ORDER

Norma L. Shapiro, J.

June 12, 1997

In this civil rights action concerning conditions of
confinement in City of Philadelphia penal institutions, New

Jerusalem Laura ("NJL") and one of its members, Genoria Harris, have moved to intervene as party-plaintiffs. NJL is a domestic non-profit corporation providing assistance to recovering drug and alcohol addicts since 1991. Genoria Harris is a member of NJL, an active participant in its programs, who resides at the Transition Center located at 2030-32 West Norris Street, Philadelphia, PA. The motion, filed May 1, 1997, will be denied for the following reasons.

This is an action under 42 U.S.C.A. §1983 (West 1981) on behalf of ten inmates and all persons similarly situated. The inmates alleged that the conditions of confinement at Holmesburg Prison violated the Eighth Amendment's prohibition against cruel and unusual punishment. Plaintiffs named various City of Philadelphia Commissioners and prison officials as defendants. The parties agreed to a Consent Decree (the Consent Decree of 1986, as modified in 1991) providing for penalties under certain circumstances: "[p]enalties shall be used or distributed as determined by the Court on the advice of the parties and Special Master." Stipulation and Agreement, Order dated December 30, 1986, p. 13, ¶ 28. Funds have since been awarded, with the consent of the parties, to charitable organizations to alleviate overcrowding in the Philadelphia prisons.¹

I. FACTS

1. For a full discussion of the procedural history of the case see Harris v. Pernsley, 113 F.R.D. 615.

In late 1994, NJL identified the property located at 2030-32 W. Norris Street ("the Property") as a potential site for a Transition Center. The owner of the Property, Christine Clark, agreed to convey it to NJL through the Donor-Taker program of the Redevelopment Authority of the City of Philadelphia ("the RDA"). On May 29, 1995, NJL submitted a Grant Proposal for \$150,000 in penalty funds to renovate the Property. \$88,800 was to be used for the 2030 West Norris property to create an advance recovery and transitional service center for ex-offenders. At request of plaintiffs and by stipulation of the parties, the court entered an Order on July 11, 1995, providing for eventual disbursement of \$150,000 to fund the NJL proposal, to be paid upon proof of the availability of the Property. The letter made all the funds available for expenditure "in accordance with New Jerusalem Laura's advance recovery and transitional service center proposal submitted to the court and accounted for to the court on the one year anniversary of the receipt."

In September, 1995, NJL was accepted into the RDA's Donor-Taker program for 2030 West Norris Street. At an October 13, 1995, status hearing the court asked if the parties objected to the transfer of money to NJL. Defense counsel deferred to Plaintiff counsel's determination that the documentation was sufficient to assume title would be transferred to NJL. Therefore, on October 27, 1995, the court transmitted \$88,800 to NJL to be used in accordance with the proposal for 2030 West Norris Street.

Over the next eighteen months, NJL invested the grant money and many hours of volunteer work to rehabilitate the property. The RDA informed NJL that in order to proceed through the donor-taker program, the title must be transferred to the City. On December 18, 1996, title to the 2030 West Norris property was transferred to the City, but the City's Vacant Property Review Committee tabled any further action to transfer the title to NJL. The City then included the property in plans for a new housing project scheduled to start construction in the summer of 1996. Claiming their due process, property and contract rights had been infringed, NJL filed an action on April 30, 1997, captioned New Jerusalem Laura, Inc. v. Redevelopment Authority of Philadelphia, et al., Civil Action No. 97-3113. This judge, to whom the action was originally assigned as related to Harris, recused sua sponte because she had been involved in settlement discussions with the parties. The case was reassigned to the Hon. John R. Padova who has received progress reports and ruled on several motions by the parties.

On May, 1, 1997, NJL moved to intervene in Harris as a party-plaintiff; NJL sought intervention as of right pursuant to Fed. R. Civ. P. 24(a) or, in the alternative, permissive intervention pursuant to Fed. R. Civ. P. 24(b) in order to protect its interests in the Property.

II. DISCUSSION

A. Intervention as of Right

Federal Rule of Civil Procedure 24(a) allows intervention:

Upon timely application . . . (2) [and] the applicant claims an interest relating to the property or transaction which is the subject matter of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Third Circuit uses a four prong analysis to determine if an applicant can intervene:

(1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation.

Brody by and through Sugzdinis v. Spanq, 957 F.2d 1108 (3d Cir. 1992), quoting from, Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir.), cert. denied, 484 U.S. 947, 108 S. Ct. 336, 98 L. Ed. 2d 363 (1987). To allow for intervention, each requirement of the test must be met. See Harris v. Reeves, 946 F.2d 214, 219; 3B J. Moore & J. Kennedy, Moore's Federal Practice ¶ 24.07[1] at 24-50 (2d ed. 1982).

1. Timeliness

The court must examine "all the circumstances" in order to determine timeliness of a motion. See NAACP v. New York, 413 U.S. 345, 266, 93 S. Ct. 2591, 2603, 37 L. Ed. 2d 648 (1973). This includes: (1) the stage of the proceeding; (2) the prejudice the delay may cause the current parties; and (3) the reason for the delay. See Mountain Top Condominium Association v. Dave

Stabbert Master Building, Inc., et al., 72 F.3d 361, 369 (3d Cir. 1995); In re Fine Paper Trust Antitrust Litigation, 695 F.2d 494, 500. "The timing and manner of intervention is purely a matter of federal law." Harris, 113 F.R.D. at 618 (cites omitted). The consideration of timeliness should begin at "the stage when inadequate representations become apparent." Id. (citing National Wildlife Federation v. Gorsuch, 744 F.2d 963, 970 (3d Cir. 1984))

This action has been pending for over a decade and is administratively closed; the court is in the end stages of enforcing a consent decree, so the "stage of the proceeding" is close to termination. It is true that NJL filed promptly after the RDA and the City allegedly threatened to interfere with its interest in the Property. NJL and Genoria Harris do not have an "interest" in this action regarding prison overcrowding, but they do have an interest in the expenditure of penalty money awarded to them by the court; that interest arose in July, 1995, when the court awarded penalty money for the rehabilitation of the Property. This motion for intervention was filed almost two years later. An intervening party cannot wait for "official notification" that its rights may be infringed, but "as soon as [the party] knew or should have known that his interests were no longer adequately protected." Harris, 113 F.R.D. at 619-20; see also, In re Fine Paper, 695 F.2d at 500. NJL should have known from the beginning that none of the parties to this action were required to protect NJL's interests in developing the Property

for which money was awarded. NJL admits it only wishes to intervene to have the issue regarding use of the Property decided. NJL alleges action by RDA is necessary to provide it with the relief it seeks. RDA is not a party to this action, and Defendant City of Philadelphia has no authority over the RDA. "An authority under the Urban Redevelopment Law is an agent of the Commonwealth and not of the local government body . . . [T]he legislature in no uncertain terms has made it clear that a redevelopment authority is a completely separate entity from the city." Herriman v. Carducci, 475 Pa. 359, 363, 380 A.2d 761, 763-64 (1977). See generally, P.S. §§ 1704-1709 (1996 & 1997 Supp.). Because the RDA is not a City agency, subject to the City's control, and the RDA is not a party to this action, plaintiff cannot obtain full relief herein.

If this court were to decide this ancillary issue, there could be considerable delay and inconvenience to the parties. This issue will divert judicial resources from issues central to prison overcrowding.

2. Sufficiency of Interest

What constitutes a sufficient interest "defies a simple definition." See Harris, 820 F.2d at 596; 3B Moore's Federal Practice, P 24.07[2], at 24-57 (2d ed. 1982). An applicant's interest must be "significantly protectable," see Donaldson v. United States, 400 U.S. 517, 531, 91 S. Ct. 534, 542, 27 L. Ed. 2d 580, "significantly protectable" interests "must be a legal interest as distinguished from interests of general and

indefinite character. . . . The applicant must demonstrate that there is a tangible threat to a legally cognizable interest to have the right to intervene." Harris, 820 F.2d at 601. The interest must be that of the proposed intervenor. See United States v. Alcan Aluminum, Inc., 25 F.3d 1174, 1185 (3d Cir. 1994) (cites omitted).

NJL misunderstands the nature of its interest in the present suit. Harris closed administratively years ago; currently, the court is merely enforcing a consent decree. Lack of compliance sometimes results in the imposition of penalties to be used, under paragraph 18 of the 1986 decree, for the benefit of the prisoner class with the advice of the parties and Special Master. See Consent Decree of 1986, p. 13, ¶ 28. NJL had no right to the penalty funds, but NJL claims the award of penalty funds has established an NJL interest in the Property but neither the parties involved in the Harris suit, nor the court, have infringed or will infringe on NJL's rights.

NJL may have a "legally cognizable interest," but not relating to this action in which they wish to intervene; their interest, if any, can be addressed in the New Jerusalem Laura action pending on Judge Padova's docket. An intervenor may "have a sufficient interest to intervene in certain issues in an action without having an interest in the litigation as a whole." See Harris, 820 F.2d at 599. NJL has failed to demonstrate any interest at all in Harris. See generally Harris v. Reeves, 946 F.2d 214; Harris v. Pernsley, 113 F.R.D. 615.

3. Effect of Resolution of Underlying Suit on Interest and Adequacy of Representation

Since the court concludes that NJL has no protectable interest, the Harris action will not have any effect on NJL's interest in the Property. Although Rule 24(a)(2) directs a court to consider "practical consequences" of litigation when deciding if a party can intervene, there are no such "practical consequences" relating to NJL's property interests.² The court has awarded penalty money, and NJL has received and utilized the funds as ordered so far as the court presently knows. RDA's alleged infringement upon NJL's property and contract rights will not be affected by resolution of Harris.

The burden of showing inadequate representation is on the intervenor. See Tribovich v. United Mine Workers, 404 U.S. 528, 538 n.10, 92 S. Ct. 630, 636 n.10, 30 L. Ed. 2d 686 (1972); Harris, 113 F.R.D. at 622. NJL's interests are unconnected to the Harris action, and need not be represented in this action.

B. Permissive Intervention

NJL requests that if intervention as of right is denied, they seek to intervene pursuant to Fed. R. Civ. P. 24(b). Rule 24(b) provides:

2. A court may find sufficient interest to intervene when the action will have a stare decisis effect on the rights of the intending intervenor. See Harris, 820 F.2d 592, 601. See, e.g., Smith v. Pangilinan, 651 F.2d 1320 (9th Cir. 1981)] This is not the case for NJL, and NJL's pending action before Judge Padova will protect any legally cognizable interest.

Upon timely application anyone may be permitted to intervene in an action . . . (2) when an applicant's claims or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Fed. R. Civ. P. 24(b) "Timeliness and existence of common questions of law or fact must inform the court's exercise of discretion in permitting intervention." Harris, 113 F.R.D., at 624. The filing of this motion is not timely and there is no common question of law and fact. NJL has understandably shown no interest in intervening except to resolve the issue of its interest in the Property. Permitting intervention would cause undue delay and prejudice the parties who have no interest in NJL's property concerns. NJL's intervention would unnecessarily take time, resources and attention of the parties and the court. NJL's petition for permissive intervention will be denied.

C. Judicial Economy

On April 30, 1997, the proposed intervenor commenced a separate action which includes the RDA as a defendant; it seeks substantially identical relief to that being requested in the Motion to Intervene. When two federal courts are asked to consider the same controversy, the object is to avoid duplicative litigation. See Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 818, 96 S. Ct. 1236, 1250, 47 L. Ed. 2d 483 (1976). Substantially identical claims are pending before Judge Padova who has held conferences, ruled on several NJL

motions, and directed the parties toward settlement discussions, and has scheduled future progress reports. Since Judge Shapiro has already recused, and Judge Padova is acting on the same cause of action, the litigation should remain on Judge Padova's docket.

NJL also seeks to enjoin the City and its agents from disturbing NJL in the enjoyment of its rights and privileges to the Property. Since the Motion to Intervene is denied, this issue is moot.

An appropriate order follows.

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ORDER

AND NOW, this day of June, 1997, upon
consideration of the New Jerusalem Laura, Inc. and Genoria
Harris' Motion to Intervene Pursuant to Rule 24 of the Federal
Rules of Civil Procedure and to Enjoin the City from taking any
action to prevent New Jerusalem Laura from completing and fully

using its Transition Center, and the City's memorandum in opposition thereto, it is **ORDERED** that the Motion is **DENIED**.

J.